

Glenda Wiles**RECEIVED**

From: David Schultz [schultz_dv@msn.com]
Sent: Wednesday, June 27, 2007 2:32 PM
To: Glenda Wiles
Subject: Ravalli County Board of Adjustment

JUN 27 2007
Ravalli County Commissioners

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Dear Commissioners,

I attended the first meeting of the Board of Adjustment (BOA) Monday evening (6/25) and participated in the hearing for the Brooks Hotel variance request. I want to comment on the performance of the Department and the BOA as they reviewed their first variance request in public.

The County Planning Department staff did a thorough job of explaining both the criteria to be considered and how the department arrived at their Findings of Fact and recommendations. Planner Karen Hughes copied and handed out documents to help citizens understand the project and the process, which was much appreciated. Chairman Connelly did a good job managing the meeting and being responsive to the public and the applicant. The staff attorney also did a good job guiding the process.

I am very concerned about how poorly the BOA itself performed. I think the decisions they reached were not supported by the facts presented. In order to approve the variance request, the BOA was required find positively on ALL of the criteria. They needed to specifically refute the Findings of Fact provided by the Department that resulted in the Department's negative recommendations. In my opinion, 4 of the 5 BOA members disregarded or trivialized Findings of Fact they didn't agree with, rather than presenting facts to refute them.

Some examples of the Board's rationale:

Criterion B - the applicant didn't demonstrate a reasonable practical hardship, nor showed that complying with zoning would prevent a reasonable rate of return on the property - in fact the applicant didn't even address it. Instead, several Board members took it on themselves to say that the applicant had invested a considerable amount and deserved to go ahead with it on that basis. One BOA member even used the rationale that if the variance were denied, the property would turn into a weed patch and thus present a hardship, so for that reason, the variance should be approved. Ridiculous. This should have been a negative determination.

Criterion C - the applicant didn't even address possible minimum or smaller deviations to alleviate the alleged hardships. And neither did the BOA. The applicant proposes to put 14 units on 3 1/2 acres. Surely, there is a smaller deviation to be considered. Would 10 units alleviate his alleged hardship? This criteria was, in fact, totally ignored by the BOA. Clearly, this should have been a negative determination.

Criteria E - (the circumstances are peculiar and not applicable to other property within the district). The BOA interpreted the "peculiarity" as the specific physical characteristics of the property. With that interpretation, every piece of property is "peculiar" and therefore, circumstances for every piece of property would be "peculiar" or "unique". That interpretation circumvents the intent of this criteria. The Department presented the usual and customary interpretations that the planning professionals use, and the circumstances of this situation were not "peculiar". Many properties have very similar circumstances in regard to current interim zoning. The Department's interpretation was correct. This, too, should have been a negative determination.

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It seemed that several BOA members were not familiar with the criteria, since they didn't even have copies. They seemed to have decided in advance to approve the request, no matter what was presented.

With the Board of Adjustment operating in this deficient manner, both interim zoning and the current county-wide zoning process are being circumvented. More importantly, public confidence in the fairness and competence of County government is being undermined.

I urge the Board of Commissioners to take action to remedy this deficiency. One suggestion is to provide additional training and tighter operational guidelines to BOA members. They need to use the criteria in a reasonable and responsible manner. Otherwise, BOA members need to be replaced.

Thank you for listening,

Dave Schultz
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